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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

AUG 30 1994

In the Matter of	)	
	)	
Implementation of Section 9 of the	)	MD Docket No. 94-19
Communications Act	)	
	)	
Assessment and Collection of	)	
Regulatory Fees for the 1994	)	
Fiscal Year	)	

**GTE'S COMMENTS**

GTE Service Corporation on behalf of its affiliated domestic telephone, equipment, and service companies hereby submits comments in support of petitions for reconsideration of the Report and Order released by the Commission on June 8, 1994, in the above-captioned proceeding.<sup>1</sup> Nine parties filed petitions for reconsideration of the Regulatory Fee Order. Comments and reply comments regarding the merits of these petitions were solicited pursuant to public notice published on August 15, 1994.<sup>2</sup> GTE addresses its comments in particular to petitions filed by Southwestern Bell Telephone Company ("SWBT"), NYNEX Corporation ("NYNEX"), and the Cellular Telecommunications Industry Association ("CTIA").

<sup>1</sup> Implementation of Section 9 of the Communications Act; Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, Report and Order, MD Docket No. 94-19, FCC 94-140 (released June 8, 1994) (hereinafter "Regulatory Fee Order").

<sup>2</sup> Public Notice, Petition for Reconsideration and Clarification of Actions in Rulemaking Proceedings, Report No. 2024 (released July 28, 1994), 59 Fed.Reg. 41760 (August 15, 1994).

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## **BACKGROUND**

In the Regulatory Fee Order, the Commission adopted a regulatory fee schedule for fiscal year 1994. There, the Commission also considered adopting other measures related to the collection of regulatory fees. One such issue was whether regulatory fee payments should be considered exogenous costs under price cap rules. In the Regulatory Fee Order, however, the Commission sidestepped this matter, saying that the issue was “beyond the scope of the proceeding.”<sup>3</sup> The Commission offered, however, that “LECs seeking to charge their regulatory fees directly to subscribers should petition for a waiver of the Commission’s rules.”<sup>4</sup>

Also in the Regulatory Fee Order, the Commission declined to amend section 0.457 of the Commission’s Rules to provide for confidential treatment of the proprietary data on which regulatory fee payments are based.<sup>5</sup> The Commission stated that “regulatees are required to submit very little data with their regulatory fee payments and it is premature for us to determine whether the disclosure of any information submitted, including fee amounts calculated on a per subscriber basis, will warrant the protection afforded by section 0.457.”<sup>6</sup> As a result, regulatees wishing to preserve the confidentiality of sensitive data must

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<sup>3</sup> Regulatory Fee Order at 34, n.38.

<sup>4</sup> Id.

<sup>5</sup> See 47 C.F.R. § 0.457.

<sup>6</sup> Regulatory Fee Order at 39-40.

request confidential treatment of such information pursuant to section 0.459 of the Commission's Rules each time regulatory fee payments are made.<sup>7</sup>

### DISCUSSION

1. The Commission Should State that a Waiver of Commission Price Cap Rules is Not Necessary in Order for LECs to Request Exogenous Cost Treatment of Regulatory Fees

SWBT's petition asks the Commission to clarify or reconsider the language in footnote 38 of the Regulatory Fee Order to make clear that local exchange carriers ("LECs") do not need to file a petition for waiver of the price cap rules in order to request exogenous cost treatment of regulatory fee payments. GTE agrees with SWBT's petition.

As SWBT notes, section 61.45(d) of the Commission's Rules provides that price cap carriers may request exogenous cost treatment for taxes and fees such as regulatory fee payments.<sup>8</sup> Because the rules already provide for such requests to be made by carriers, there is no need for carriers to file a petition for waiver of section 61.45(d), or any other section, in order to request exogenous treatment of regulatory fee payments. Accordingly, GTE urges the Commission to grant SWBT's petition and clarify or modify the Regulatory Fee Order to indicate that no such waiver requests are necessary.

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<sup>7</sup> See Id. at 40; 47 C.F.R. § 0.459.

<sup>8</sup> SWBT Petition at 2. 47 C.F.R. § 61.45(d)(1).

2. The Commission Should Reconsider its Decision Not to Amend Section 0.457 of its Rules to Grant Confidential Treatment to Sensitive Business Information Filed with Regulatory Fees

CTIA petitions the Commission to reconsider its decision not to amend section 0.457 of its rules to include a provision granting confidential treatment to reports and regulatory fee computations based on the number of cellular and other commercial mobile radio service subscribers.<sup>9</sup> Similarly, NYNEX asks the Commission to reconsider the requirement that cellular carriers disclose the actual number of their subscribers on a system-by-system basis for purposes of fee calculation.<sup>10</sup>

Both CTIA and NYNEX argue that market-specific subscriber count information, if made available to competitors, can be used to stimulate marketing activity by such competitors, and otherwise thwart competition.<sup>11</sup> CTIA argues, further, that the Commission erred in basing its decision not to amend its rules on the quantity of the information rather than on the quality. CTIA correctly notes that in deciding whether information merits protection under the Freedom of Information Act, the agency must weigh the competitive harm that would come to

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<sup>9</sup> CTIA Petition at 1-9.

<sup>10</sup> NYNEX Petition at 2-5.

<sup>11</sup> NYNEX Petition at 3; CTIA Petition at 4-5. CTIA argues, for example, that subscriber count data can be used by competitors "to gauge the effect of their marketing efforts within that market." CTIA Petition at 5.

the information provider rather than the amount of information that providers risk disclosing.<sup>12</sup>

GTE agrees that the Commission should reconsider this aspect of its Regulatory Fee Order. On April 7, GTE filed comments in this proceeding asking the Commission to amend section 0.457(d) of its rules to provide for confidential treatment of regulatory fee amounts and the confidential information on which the calculation of fees are based. GTE noted that subscriber count information is confidential and sensitive business information. GTE also argued that requiring regulatees to make repeated applications for confidential treatment under section 0.459 of the Commission's Rules creates unnecessary administrative burdens and leads to uncertain results for information providers.<sup>13</sup> GTE continues to believe that subscriber count information is confidential in nature, and that release of such information could cause substantial competitive harm to regulatory fee payers. Accordingly, GTE urges the Commission to grant the petitions filed by CTIA and NYNEX and reconsider its decision not to amend section 0.457 of its rules.

**In summary:** GTE supports the SWBT petition for reconsideration or clarification of the Regulatory Fee Order asking the Commission to find that no petition for waiver of price cap rules is necessary in order for LECs to seek exogenous cost treatment of regulatory fee payments. GTE also supports the

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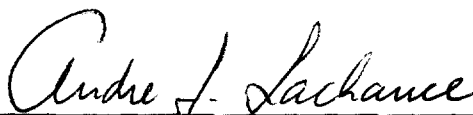
<sup>12</sup> CTIA Petition at 6-7. See also, National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974); National Parks and Conservation Association v. Kleppe, 547 F.2d 673 (D.C. Cir. 1976).

<sup>13</sup> See GTE Comments, MD Docket 94-19 (filed April 7, 1994), at 5-6.

petitions of NYNEX and CTIA asking the Commission to reconsider its decision not to amend section 0.457 of its rules to grant confidential treatment to subscriber counts and regulatory fee payment amounts based on such counts.

Respectfully submitted,

GTE Service Corporation and its affiliated  
domestic telephone, equipment and  
service companies

A handwritten signature in cursive script, reading "Andre J. Lachance", is written over a horizontal line.


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August 30, 1994

Their Attorney

### **Certificate of Service**

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Comments" have been mailed by first class United States mail, postage prepaid, on the 30th day of August, 1994 to all parties of record.

  
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Judy R. Quinlan